

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Ruma Akhter,  Plaintiff,  -v-  Compass Group USA, Inc.,  Defendant.	<b>Civ. Action #: 22-CV-02194 (JMF)(GWG)</b>  <b>Plaintiff's Declaration in Opposition to Defendant's Motion to Compel Arbitration</b>
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I, Ruma Akhter, declare and affirm under the penalty of perjury as follows:

1. I am the Plaintiff Ruma Akhter (“Plaintiff” or “Akhter”) in the above-entitled action.
2. I make this declaration in opposition to the motion of Defendant Compass Group USA, Inc. (“Defendant”), to compel arbitration.
3. I was employed by Defendant from on or about September 27, 2021 to on or about February 21, 2022.
4. It is my understanding that Defendant is asking the Court to send my case out of Court and to arbitration – Defendant’s request/motion should be denied.
5. Around the time of my hiring on or about September 27, 2021, I signed a set of the documents provided to me by Defendant – these documents were compiled and presented in electronic form and signed electronically through the internet and it is my understanding that these were known as and referred to as the Handbook and Handbook Supplement and also included the arbitration page in **Exhibit 1**. These documents known as the Handbook and Handbook Supplement – including the arbitration page, were emailed to me by Defendant on or about September 27, 2021 along with the acknowledgement of receipt in **Exhibit 2**. It is

my understanding that the acknowledgement in **Exhibit 2** covers the arbitration page in **Exhibit 1**, and it states as follows:

THIS HANDBOOK IS NOT INTENDED TO BE NOR DOES IT CONSTITUTE AN EXPRESS OR IMPLIED CONTRACT OF ANY KIND IN FAVOR OF ASSOCIATES NOR SHALL ANY ASSOCIATE OR APPLICANT FOR EMPLOYMENT HAVE ANY CONTRACTUAL RIGHTS, CLAIMS OR PRIVILEGES AGAINST THE COMPANY BY VIRTUE OF THIS HANDBOOK.

6. It was my understanding that the documents I signed were not a contract with Defendant – especially given that Defendant never signed the arbitration page.

7. The arbitration page in Exhibit 1 states as follows:

I may opt out of this Agreement by sending written correspondence via certified mail to: Office of General Counsel, 2400 Yorkmont Road, Charlotte, NC 28217 clearly and unambiguously indicating that I opt out of the Agreement. Correspondence must be received within 30 days of execution of this Agreement, and if not, this Agreement is binding. I understand that I will be reimbursed for costs associated with the postage if I submit such a request to the Human Resources Department by providing a receipt demonstrating costs incurred with the mailing.

8. Once again, it was not my understanding that any of these documents created a contract especially in light of Defendant's statement in the acknowledgement and receipt (Exhibit 2), that no contract was created.

9. Furthermore, it has always been my understanding that an executed agreement or document requires the signature of all parties. I note that the arbitration page provided to me and emailed to me was never signed by Defendant and if and when Defendant does sign the arbitration page, I will exercise my right to opt out within 30 days as set forth on the arbitration page. Once again however, it has always been my understanding that none of

these pages including the arbitration page created a contract as Defendant stated in the receipt and acknowledgement in **Exhibit 2** – especially where Defendant never signed the document and arbitration page.

10. I kindly ask that this Honorable Court deny Defendant's motion to compel arbitration, or at minimum, have a jury trial to decide whether there is an agreement to arbitrate in this case.

11. I am not an attorney, and my attorney will be handling the legal arguments and other matters in the case.

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing declaration is true and correct to the best of my understanding and knowledge.

Dated: 07 / 06 / 2022

  
\_\_\_\_\_  
Ruma Akhter (Plaintiff)

# Exhibit 1

## MUTUAL ARBITRATION AGREEMENT

I and Compass Group USA, Inc. and its subsidiaries, sectors, affiliates, and divisions (collectively, "Compass Entities") mutually agree to utilize binding individual arbitration as the sole and exclusive means to resolve all legal claims between us, including without limitation those that may arise out of or be related to my employment, compensation, or termination of employment. I and the Compass Entities waive our rights to bring a claim against the other in a court of law and in doing so, ***specifically waive our rights to a jury.*** Except as provided below, any claim, dispute, and/or controversy that I may have against the Compass Entities (or their directors, officers, employees, or agents), or that the Compass Entities may have against me, shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act ("FAA"), except that if for any reason arbitration is unavailable under the FAA, then the law of the state in which I last worked for any of the Compass Parties shall govern this Agreement. The FAA applies to this Agreement because my employer's business involves interstate commerce.

The only exceptions to the requirement of binding arbitration are claims (1) arising under the National Labor Relations Act that are brought before the National Labor Relations Board, (2) for unemployment insurance or medical or disability benefits under a plan that provides its own process for dispute resolution (although claims for retaliation are covered by this Agreement), (3) to enforce this Agreement, compel arbitration, or enforce, modify, or vacate an arbitrator's award, and (4) claims for which this Agreement would be invalid as a matter of federal law, or state or local law that is not preempted by federal law. Nothing herein shall prevent me from filing and pursuing proceedings before the United States Equal Employment Opportunity Commission or similar state or local agency, but if I pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to arbitration.

All claims I bring shall be brought in arbitration in only my individual capacity. This Agreement neither allows nor permits the consolidation or joinder of other claims or controversies involving any other employees or parties, or permit such claims or controversies to proceed as a class, or collective action, to the maximum extent permitted by law. No arbitrator shall have the authority to order any such class, or collective action. I waive any right to bring such an action.

Any dispute concerning the scope or validity of the immediately preceding paragraph shall be decided by a court of competent jurisdiction and not the arbitrator. If a party brings an action that includes both claims subject to arbitration and claims not subject to arbitration under this Agreement, all claims not subject to arbitration shall be stayed until the other claims are fully arbitrated, and in such a situation, the arbitrator's decision on factual and legal issues shall be dispositive in any separate lawsuit between only the same parties on claims that are not subject to arbitration.

Except as noted in the immediately preceding paragraph, the arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the enforceability, applicability, or interpretation of this Agreement, including without limitation any claim that it is void or voidable. Thus, except as noted in the immediately preceding paragraph, I and the Compass Parties voluntarily waive the right to have a court determine the enforceability of this Agreement but may seek a court order delegating such questions to the arbitrator.

The arbitrator shall be a retired state or federal court judge in the state in which I most recently worked for one of the Compass Entities, or an

otherwise qualified individual to whom the parties mutually agree. All rules of evidence, Federal Rule of Civil Procedure 68 ("Offer of Judgment"), and all rights to resolution of the dispute by means of motions to dismiss or for summary judgment shall apply. The arbitrator shall render a written award setting forth findings of fact and conclusion of law. Resolution of all disputes shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including without limitation notions of "just cause") other than such controlling law. The arbitrator shall not have the authority to order any remedy that a court would not be authorized to order; rather, except as to the prohibition on any class, collective, or group action, the arbitrator shall have the power to award all legal and equitable relief that would be available in court under applicable law. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

The Compass Entities shall pay all costs unique to arbitration, but if I am the party initiating the claim, I agree to pay an amount equal to the filing fee to initiate the claim in court in my home state. Except as determined by the arbitrator in accordance with controlling law, I and the Compass Related Entities will pay our own attorneys' fees and costs that are not unique to arbitration. The arbitrator may award reasonable and necessary fees and costs or any portion thereof to the prevailing party to the same extent a court would be entitled to do so in accordance with controlling law.

***I may opt out of this Agreement by sending written correspondence*** via certified mail to: Office of General Counsel, 2400 Yorkmont Road, Charlotte, NC 28217 clearly and unambiguously indicating that I opt out of the Agreement. Correspondence must be received within 30 days of execution of this Agreement, and if not, this Agreement is binding. I understand that I will be reimbursed for costs associated with the postage if I submit such a request to the Human Resources Department by providing a receipt demonstrating costs incurred with the mailing.

This is the entire agreement between myself and the Compass Entities regarding dispute resolution. This Agreement supersedes any and all prior agreements regarding these issues. Oral representations or agreements made before or after my execution of this Agreement do not alter this Agreement. If any term, provision, or portion of this Agreement is determined to be void or unenforceable, it shall be severed and the remainder of this Agreement shall be fully enforceable.

I HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND TO ALL OF THE ABOVE TERMS. I UNDERSTAND THAT THIS AGREEMENT REQUIRES ME TO ARBITRATE, AMONG OTHERS, ANY AND ALL DISPUTES THAT ARISE OUT OF MY EMPLOYMENT.

DO NOT SIGN UNTIL YOU HAVE READ AND AGREED WITH THE ABOVE AGREEMENT.

Print Full Name Ruma Akhter I

 Digitally signed by: Ruma Akhter I on 09/27/2021  
Signature \_\_\_\_\_

Date 09/27/2021

[RETAIN IN EMPLOYEE PERSONNEL FILE]

# Exhibit 2



## RECEIPT OF ASSOCIATE HANDBOOK

"I acknowledge receipt of this Handbook, and agree to comply with the policies and procedures as written in this Handbook and respective Handbook Supplement. I further agree that I will read the Handbook and Handbook Supplement and alert my Manager if I do not understand any of its contents."

Associate's Signature: Digitally signed by: Ruma Akhter I on 09/27/2021 Date: 09/27/2021

Associate's Name (print): Ruma Akhter I Date: 9/27/2021

THIS HANDBOOK IS NOT INTENDED TO BE NOR DOES IT CONSTITUTE AN EXPRESS OR IMPLIED CONTRACT OF ANY KIND IN FAVOR OF ASSOCIATES NOR SHALL ANY ASSOCIATE OR APPLICANT FOR EMPLOYMENT HAVE ANY CONTRACTUAL RIGHTS, CLAIMS OR PRIVILEGES AGAINST THE COMPANY BY VIRTUE OF THIS HANDBOOK. NOTHING IN THIS HANDBOOK IS INTENDED TO CREATE ANY TYPE OF AGREEMENT FOR EMPLOYMENT, CONTINUED EMPLOYMENT OR GUARANTEED HOURS OF WORK.

Complete and return this Receipt to your immediate Manager. Your immediate Manager will then have it filed with your personnel record.